



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

LNO/166789

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**PRELIMINARY RECITALS**

Pursuant to a petition filed June 19, 2015, under Wis. Admin. Code § DCF 201.07(1)(e), to review a decision by the Rock County Department of Social Services in regard to Other, a hearing was held on September 10, 2015, at Janesville, Wisconsin.

The issue for determination is whether the Department correctly imposed a lien against the petitioner to pursue recovery of a past-due child care public assistance debt of \$14,861.00.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Petitioner's Representative:

Attorney [REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Children and Families  
201 East Washington Avenue, Room G200  
Madison, Wisconsin 53703

By: [REDACTED] Deputy Rock County Corporation Counsel  
Rock County Department of Social Services  
1900 Center Avenue  
PO Box 1649  
Janesville, WI 53546

**ADMINISTRATIVE LAW JUDGE:**

Peter McCombs  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Rock County. She was receiving child care benefits in the periods of March 1, 2001 – August 31, 2003.

2. On September 16, 2003, the respondent received a fraud complaint indicating that petitioner had been living in [REDACTED], Illinois, with her child's father for the past several years. Following an investigation, the respondent determined that petitioner was living in [REDACTED] between March, 2001, and August, 2003.
3. On January 21, 2004, the respondent issued Child Care Overpayment Notices, with worksheets showing the calculations, to the petitioner at [REDACTED], Beloit, WI, informing her that it had determined that she had been overpaid a total of \$14,861.00 in Child Care benefits in the period of March 1, 2001 – August 31, 2003. The individual claims were identified as follows:
 

3900224653	03/01/01 – 02/28/02	\$5,778.00
5900224655	03/01/02 – 02/28/03	\$6,279.00
6900224656	03/01/03 – 08/31/03	\$2,804.00
4. On February 3, 2004, a Repayment Agreement was mailed to the petitioner at [REDACTED], Beloit, WI, asking her to agree to repay the overpayments described in Finding of Fact #3, above; but the agency received no response.
5. The petitioner was issued dunning letters, addressed to [REDACTED], Beloit, WI, on this debt three times; the letters were dated March 2, 2004, April 2, 2004, and May 4, 2004.
6. Petitioner's mother resides at [REDACTED], Beloit, WI.
7. On June 3, 2015, the Department issued a Notice of Warrant Docketed in Rock County to the petitioner informing her that the Department had acted to impose a lien of public record against her in the total amount of \$14,877.10, arising from the Child Care benefits overpayments of March 1, 2001 – August 31, 2003.
8. On June 19, 2015, the petitioner filed an appeal with the Division of Hearings & Appeals contesting the imposition of the lien.

### DISCUSSION

When a person fails to repay a debt for public assistance, and any appeal rights concerning that debt have passed, the county agency may seek a warrant that directs the clerk of courts to place the person's name in the judgment and lien docket. The amount of the judgment and lien equals the amount still owed on the overpayment of benefits. Wis. Stat. § 49.195(3m) and Wis. Adm. Code, § DCF 101.23(9). Because this process occurs after the time for any underlying appeal has passed, the person can only challenge whether the agency has correctly identified her and whether she has been given proper credit for all payments made against the debt.

Petitioner argues that she never received the overpayment notices, the repayment agreement, or the dunning notices. She notes that she relocated to Pennsylvania in 2005, and that the respondent was aware of this. She also testified that she resided at the [REDACTED] address between 2001 and 2004.

The petitioner asserts that the respondent should not be allowed to proceed with the levy because petitioner did not, in fact, live with her child's father, and therefore no overpayment ever occurred. As noted above, a hearing concerning the docketing of a warrant is limited to questions of prior payment of the debt and mistaken identity of the debtor. Wis. Admin. Code § DCF 101.23(9)(a)5; See also, Wis. Stat. § 49.195(3s). Neither is at issue here. The respondent issued numerous notices to the petitioner at her address of record, petitioner's address of record is her mother's residence, the record does not evince any prior mailing issues at that address, and respondent's representative testified that none of the notices were returned. The petitioner has not established that these notices were not delivered as mailed. As such, I find that there were earlier opportunities to challenge the validity of the overpayment, and the

petitioner did not avail herself of those opportunities. I further note that such overpayment determinations must be appealed within 45 days of these notices. See, Wis. Admin. Code § HA 3.03(3).

She further contends that pursuit of this debt more than 10 years after it was alleged to have been incurred, is unfair and untimely. She argues that laches should be invoked in this circumstance. The Division of Hearings and Appeals has long and consistently held that it lacks the equitable powers needed to consider the fairness of a situation. See, *Wisconsin Socialist Workers 1976 Campaign Committee v. McCann*, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions. Thus, I cannot overturn the result desired by the respondent under theories of unconstitutionality, laches, or equitable estoppel. Petitioner concedes that the agency has correctly identified her and that she has not repaid the debt. Under these circumstances, the law requires me to grant the agency's request for warrant directing the clerk of court to place her name in the judgment and lien docket.

### **CONCLUSIONS OF LAW**

The Department is authorized to issue the warrant in this case because petitioner has an outstanding debt and she is the correct person who owes the money.

**THEREFORE, it is**

**ORDERED**

That the petitioner's appeal is dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### **APPEAL TO COURT**

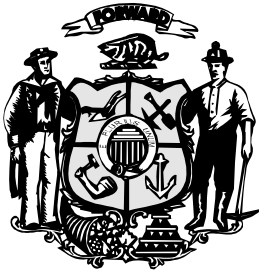
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Room G200, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 24th day of November, 2015

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\sPeter McCombs  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on November 24, 2015.

Rock County Department of Social Services

Public Assistance Collection Unit

Attorney [REDACTED]

Attorney [REDACTED]